Property Taxpayers'

BILL OF RIGHTS

1997-98 ANNUAL REPORT

STATE BOARD OF EQUALIZATION

TAXPAYERS' RIGHTS ADVOCATE OFFICE

California Board of Equalization
450 N Street, MIC:70
P.O. BOX 942879, Sacramento, CA 94279-0070
FAX: (916) 323-3319

Jennifer L. Willis, *Advocate*
(916) 324-2798

BUSINESS TAXES

Mark S. Walker
(916) 324-2797

Charlotte Paliani
(916) 445-0218

PROPERTY TAXES

Bob Reinhard
(916) 323-2513

STATE BOARD OF EQUALIZATION

Mr. E. L. Sorensen, Jr.
Executive Director
December 1998

Dear Mr. Sorensen:

I am pleased to present this Property Taxpayers' Bill of Rights Annual Report for your and the Board's consideration. This year, I will present this report at the Board's Property Taxpayers' Bill of Rights Hearing scheduled Wednesday, December 9, 1998.

This report incorporates the Taxpayers' Rights Advocate (TRA) Office property tax accomplishments for the period January 1997 through July 1998. As you are aware, we agreed to change the reporting period to the fiscal year and schedule the Property Taxpayers' Bill of Rights Annual Hearing for December 9, 1998, to immediately follow the Board's Assessors' day with the California Assessors' Association. In addition to accomplishments and activities of the TRA Office, I have included identification of problem areas and recommendations for future actions.

I look forward to discussing this report with you, the Board, and other interested parties.

Respectfully submitted,

Jennifer L. Willis
Property Taxpayers'Rights Advocate

TABLE OF CONTENTS

PROPERTY TAXPAYERS' BILL OF RIGHTS – BACKGROUND

The Property Taxpayer's Bill of Rights went into effect January 1, 1994. It governs the assessment, audit, and collection of property taxes and ensures that taxpayers receive fair and uniform treatment under the property taxation laws. Statewide, there were approximately 12 million units on the local property tax rolls last year. Appendix A provides the text of the law. Appendix B provides information on the differences between the Business and Property Taxpayers' Bills of Rights.

The Taxpayers' Rights Advocate's (TRA) Office facilitates resolution of taxpayer complaints or problems; monitors various Board tax and fee programs and all 58 county property tax programs for compliance with the Taxpayers' Bills of Rights; recommends new procedures or revisions to existing policy to ensure fair and equitable treatment of taxpayers; and participates on various task forces, committees, and business taxpayer service days. During the year, mandated Taxpayers' Bill of Rights public hearings are held to enable the Board Members to hear suggestions and comments from the public.

Generally, the TRA Office assists taxpayers who have been unable to resolve a matter through normal channels or when they want information regarding procedures relating to a particular set of circumstances or their rights in both the audit and compliance areas.

Taxpayers also call just wanting to discuss their frustration or needing assurance or confirmation that staff action is lawful and just. In cases where the law, policy, or procedure does not allow any change to the staff action, the TRA Office is alerted to a potential area that may need clarification or modification. Several of the past suggestions for *Taxpayer Information Bulletin* articles, recommendations for policy or procedural changes, and legislative proposals have resulted from these taxpayer contacts.

The TRA Office offers assistance to taxpayers, Board, and county staff to facilitate better communication between those parties and eliminate potential misunderstandings. Taxpayers are provided information on policies and procedures so that they can be better prepared to discuss their issues and effect resolution.

1997 - 98 HIGHLIGHTS

STATUS OF IMPLEMENTATION OF 1996 REPORT RECOMMENDATIONS

Following is a summary of recommendations from the Property Taxpayers' Bill of Rights 1996 Annual Report and their status:

1. Special Assessments And Implementation Of Proposition 218:

Proposition 218–approved by the state's voters in November 1996–is in the process of being implemented. There is uncertainty over some of its provisions in the areas of property-related fees, assessments, elections, taxes, and debt. As noted in the Legislative Analyst's Office Report, Understanding Proposition 218, "We believe our uncertainty—frequently shared by other analysts of the measure—will be resolved only when the Legislature enacts implementing statutes or court rulings become available."

Status: The TRA Office has continued to follow the implementation of Proposition 218, and as local jurisdictions have held the elections required by this measure, we have answered many telephone calls from puzzled taxpayers. Confusion especially exists where cities and counties hold elections to obtain approval of assessments that had been instituted prior to the passage of Proposition 218. The TRA Office will continue to monitor compliance with the proposition.

2. Assessment Appeals Businesses

Businesses have emerged that solicit taxpayers to authorize an agent to assist them in lowering the assessed value of their property. For a fee (typically ranging between $35 and $100), these businesses state that they will verify and provide a printout of recent comparable sales, compute a new opinion of value showing the assessor's value to be incorrect, and prepare timely submissions for the taxpayer.

Many property owners are unaware that property information and a list of sales are available from the assessors' offices with just a nominal charge for copies. If property owners believe their assessments exceed fair market value, they may, as an optional first step, request a review themselves from the assessors' offices or file an appeal with the assessment appeals board.

While free enterprise is to be encouraged several problems have arisen recently, with some companies engaging in misleading solicitation and other abusive practices. Examples include selling inaccurate comparable sales data information; attorneys signing applications on behalf of property owners and then abandoning the applicant through the assignment of their rights to non-attorney agents; signing and filing assessment appeal applications without the knowledge or consent of the property owners; submitting false addresses and telephone information, thus preventing the county from notifying the property owners that an appeal has been filed; filing duplicate applications to those filed legitimately by the property owners or their agents; and withdrawing applications without the property owners' knowledge.

Status: TRA Office worked with Board Member Johan Klehs' office and the Board's Legislative Division in providing information to legislators and local officials on Assembly Member Susan Davis' AB 1178, which will regulate some of the unscrupulous practitioners. AB 1178 passed last year and became effective January 1, 1998. Since then, we have provided assistance to local officials — usually district or city attorneys — on the provisions of the bill. There has been vigorous local prosecution of the worst offenders, but we will continue to monitor enforcement of the provisions and suggest amendments if necessary.

3. Notification To Taxpayers Of Value Increases

Primarily due to the economy, some property taxpayers in the majority of California counties have experienced declines or no increases in the market value of their homes over the past few years. This has, in some case, resulted in significantly lowered assessed values. Proposition 8, adopted by voters in November of 1978, requires the assessor to reduce a property's assessed value in some situations to reflect such declines in market values and the method for making these reductions are set forth in R & T Code section 51, which requires the assessor to annually enroll the lesser of the factored base year value or the current fair market value. Once a reduction below factored base year value is made, section 51, subdivision (e), requires that the assessor annually reappraise the property until its fair market value exceeds the factored base year value. Many taxpayers are under the impression that Proposition 13 limits increases in their values to a maximum of only 2% per year. However, these limitations may not be applicable when a property has received the benefit of Proposition 8.

California is starting to see increases in property values. R & T Code section 51 requires the assessor to annually review a property's value once a temporary reduction in the assessed value has been granted as a result of a decline in its market value. The law provides that locally assessed real property shall be assessed at the lesser of two values: (1) a property's base year value (typically established at the time of acquisition or new construction), annually adjusted for inflation not to exceed 2%, or (2) the current market value as of the lien date, now January 1. Once reduced, the assessed value may be increased up to the adjusted base year value in any year, consistent with existing market conditions. The increase in value is limited only by the current market value as of the lien date, or by the factored Proposition 13 value, whichever is less. However, because of Proposition 13, many taxpayers are under the impression that their values can be raised a maximum of only 2% per year.

To minimize taxpayer surprise, reduce anticipated appeals, and assist taxpayers in understanding and planning their future liabilities, a method should be developed to ensure that assessees are aware of increases to and receive timely notification of their current factored base year values.

Status: R & T Code section 619 was amended by Chapter 940 of the Statutes of 1997 (Senate Bill 1105), in effect January 1, 1999. The new provisions, incorporating language developed by the TRA Office and proposed by the Board, clarify the requirement to notify assessees when there is a change in value, and provide additional reporting requirements on future increases when the increase stems from restoring a value previously reduced pursuant to Proposition 8. We will be working with the counties and the Property Taxes Department this coming year, to ensure the smooth implementation of SB 1105.

4. Appeals Board Values May Not Apply To Succeeding Year(s)

Because of increasing workloads, many appeals board hearings are taking more than a year to schedule; some applicants are not aware that the value set by the board may affect only the year for which the timely application was filed with respect to Proposition 8 declines in market value. Taxpayers need to be better informed about the application process. Also, a method should be considered to allow for changes in the subsequent year where the hearing and final determination are not completed within the assessment year during which the application is filed.

Status: The TRA Office worked with the Property Taxes Department, Legal Division, and other interested parties to revise the *Application for Changed Assessment* form, BOE-305-AH. The instructions clearly state that an application must be filed for each year the taxpayer disagrees with the assessor's value and that an application should be filed for the current year, even where the taxpayer has an application pending for a prior year.

In 1995 the TRA Office, at the suggestion of the Legal Division and the Property Taxes Department, started working on a pamphlet describing local assessment appeals procedures. In 1997 the Property Taxes Department and the TRA Office continued the development and publication of the pamphlet. As a result, Publication 30, *Residential Property Assessment Appeals*, was published in April 1998. Among its features, it cautions the taxpayer to file an application for each year where there is disagreement regarding the assessed value of the property.

The revised assessment appeal application and the new Publication 30 better inform taxpayers of their rights and the need to file for each year where there is a disagreement on the assessed value of their property. Counties are distributing the publication to taxpayers, and we are already receiving calls from people finding the publication helpful and/or seeking additional information. We will continue to monitor this area, and the need to consider solutions allowing a change to a property's subsequent year value when a hearing and final determination of value is not completed within the assessment year during which the application is filed.

5. Informal Assessment Reviews For Proposition 8 Declines

In July 1995, R & T section 4831 was amended to provide the assessor a one-year period to correct a value after the roll has been submitted to the auditor in those situations where the assessor acknowledges the assessed value should have been reduced in accordance with Proposition 8 guidelines, but an appropriate reduction was not made. However, there are no provisions spelling out the assessees' ability to request that the assessor review their property's value.

Status: The informal assessment review provisions in section 4831 appear to be working. Many assessors are aggressively encouraging taxpayers to come in to their offices to discuss assessments when they believe their assessed values are too high. To date, we have not received complaints that suggest any additional administrative or legislative solutions are required. We will continue to monitor this situation, but we anticipate the application of Section 4831 will decrease as the economy and the real estate market improve.

ADDITIONAL ACTIVITIES AND ACCOMPLISHMENTS

In addition to pursuing the recommendations contained in last year's report, other TRA Office activities and accomplishments have included the following:

- Responded to property taxpayer contacts from throughout the state. Many of these taxpayers were referred from local assessment officials — assessors, tax collectors, clerks of the board, and auditor-controllers — while others came from the Board's Legal and Legislative Divisions and Property Taxes Department. Some contacts have read about our office from annual reports filed in public libraries, and others might have heard mention of our office in one of the news releases announcing important property tax dates and deadlines. Increasingly we are receiving calls from taxpayers who became aware of our office, and obtained our telephone number, from the Board's Internet site. Most of our contacts are telephone calls, although we receive letters, and on occasion taxpayers visit us in person.

- Participated with the Board's Property Taxes Department as it coordinated various efforts to include industry representatives, assessors, and others in the revisions to various laws, rules, and handbooks.

- Participated in various California Assessor Association conferences.

- Using media contacts, informed taxpayers of various critical dates and provided them timely information throughout the year.

IDENTIFIED PROBLEM AREAS AND RECOMMENDATIONS

Following are identified problems and suggested recommendations.

1. ***Assessed values are increasing by more than two percent per year. There is perceived conflict between Article XIII A, section 2, subdivision (b) of the California Constitution (as amended by Proposition 8 in November 1978) and R&T Code section 51(a).***

Article XIII A reads that a decline in value may reduce the "full cash value base"; R & T Code section 51(a) states that the assessor will enroll the lesser of the appropriately indexed base year value or the current lien date full value.

With the improvement in the State's economy and rising real estate values, many property owners are experiencing increases in assessed value of five percent, ten percent, or more, as assessors restore previously reduced property values back to their factored base year value. Many of these people believe that Proposition 13 limited all annual increase to two percent. Prior to the adoption of Proposition 8, this subdivision of section 2 of Article XII A read:

> (b) The fair market value base may reflect from year to year the inflationary rate not to exceed two percent (2%) for any given year or reduction as shown in the consumer price index or comparable data for the area under taxing jurisdiction.

In recognition of confusion about proper assessment in a declining economy, the Legislature proposed a constitutional amendment. After approval of Proposition 8 by the electorate in November 1978, the language in subdivision (b) was changed to read:

> (b) The full cash value base may reflect from year to year the inflationary rate not to exceed 2 percent for any given year or reduction as shown in the consumer price index or comparable data for the area under taxing jurisdiction, or may be reduced to reflect substantial damage, destruction or other factors causing a decline in value.

The argument is now being made that the amended Article XIII A language mandates that a decline in value creates a new, lower, base year value. Further, that increases in assessed value are limited to the two-percent (or consumer price index) maximum applied to this new base year value.

The language in R & T section 51(a) and long-standing practice appears to contradict this interpretation. It states that the assessor shall enroll the lesser of the indexed base year value or the current fair market value:

(a) … the taxable value of real property shall … be the lesser of:
(1) Its base year value, compounded annually since the base year by an inflation factor, ….
(2) Its full cash value, as defined in Section 110, as of the lien date ….

From contacts the TRA Office has received, we are aware that counties are receiving an increasing number of calls regarding the perceived two percent cap on assessed value increases. Several taxpayers have indicated they intend to sue, to limit the increases to two percent.

Recommendation:

This apparent contradiction between the Constitution and R & T Code section 51 should be resolved. The language in Article XIII A, section 2, subdivision (b) may be permissive, allowing the Legislature's long-standing interpretation that the original base year value does not change, and the taxable value can always be increased to the appropriately indexed base year value. If this is the case, the Board should work with local government agencies to publicize those situations where an assessment can increase by more that two percent from year to year. A series of news releases, with examples, would help taxpayers understand what is happening. Also, a pamphlet could be developed for use in county offices, explaining Proposition 13, Proposition 8, declines in value, and the proper application of the inflation rate.

If, however, the second "may" in Article XIII A, section 2, subdivision (b) is mandatory, as the first "may" appears to be, the Board should work with, and in support of, those taxpayers challenging the legislative interpretation in R & T section 51. The Board should also propose amendments to R&T sections 50 and 51 (and Property Tax Rules 460 and 461) that will correctly interpret Article XIII A, section 2, subdivision (b).

2. Taxpayers question the assessment of taxable personal property disposed of after the lien date but before the fiscal year. The application of the current law seems unfair and illegal to some owners of vessels and aircraft.

When property is sold or disposed of after the lien date (January 1st), that property is taxable to the old owner. For example, assume a pilot possessed a seaplane on January 1, 1998, he sold it on January 2, 1998. Based on the aircraft's' value on January 1, 1998 he is responsible for the property taxes on the aircraft for the entire 1998-99 fiscal year, commencing July 1, 1998 and ending June 30, 1999.

The same general laws affect the assessment and taxation of real property on the secured roll. However, there are differences, because of the involvement of title and escrow companies. Further, there are specific laws governing disaster relief and the timely reconstruction of damaged or destroyed real property after a misfortune or calamity.

When a home is sold, the escrow company apportions the expenses and benefits, between the parties, whether paid in advance or in arrears. These can include adjustments for taxes, assessments, rent, dues, interest on loans, and prepaid insurance. Because of the involvement of the escrow company the seller is only responsible for property taxes up to the date of the sale. But sellers of vessels and aircraft may not use the services of an escrow company, hence a proration of the property taxes may never be agreed upon, and the seller – the owner on the lien date – remains legally liable for payment of taxes.

Where the home is damaged or destroyed, specific provisions in R & T Code sections 51(b) and (k), 70, and 170 provide for the reassessment of the property. In some cases, an actual proration of the taxes paid, due, or delinquent, based upon the damaged or salvage value of the property might also occur. Such a proration would not occur with an airplane or boat unless the county has a R & T Code section 170 disaster relief ordinance.

Assessors and tax collectors' offices throughout this state spend time explaining to exasperated taxpayers why they owe taxes on a boat or plane they no longer own. Many of these taxpayers are referred to the State, with comments such as, "I know it isn't fair, why don't you call the Board?" Since the period between the lien date and the beginning of the fiscal year has increased from four to six months due to the 1997 change in the lien date from March 1st to January 1st, this problem has only been exacerbated.

Recommendation:

Several ideas have been suggested regarding the taxation of vessels and aircraft. A supplemental assessment system, with prorations, has been suggested. A proposal to impose a license fee, in lieu of a property tax, has also been considered. The Board should work with local government officials to advance a method to review the assessment and collection of property taxes on vessels and aircraft.

3. The assessor may not have current indicators of full cash value for properties where base year values were set many years ago.

There is presently a conflict in the law regarding the procedures to be followed in local assessment appeals with respect to discovery and exchange of information between the assessor and the appealing taxpayer. The discovery procedure in local assessment appeals is found in R & T Code section 1606 and Board Rule 305.1, and provides for a mutual exchange of information between the assessor and the applicant taxpayer. The applicant may initiate an exchange regardless of the value of the property; the assessor may initiate an exchange only if the value of the property exceeds $100,000.

Some assessors are using the provisions of R &T Code Section 441 for discovery after an application for appeal has been filed. This section allows the assessor to request, for assessment purposes, information and records regarding an applicant's property, including construction and development costs, rental income and expenses, and other data relevant to a property's value. Taxpayers have complained that some assessors' requests for information amount to an abuse of this authority and that taxpayers are not afforded reciprocal means of obtaining information from the assessor's office. Although we recognize the assessor's need for current data where a property may not have been appraised for several years, and where values have been declining, the assessor's request should not be a one-way street. The proper assessment of property is essential to local government and the health and welfare of the citizens of this state. It is important that both sides understand that they will be treated equally and fairly during the equalization process.

Recommendation:

Work with the Legislative Division, the Property Taxes Department, and the California Assessors' Association to develop legislation that will "level the playing field," meeting the assessors' need for information while at the same time insuring that applicants have the opportunity to see what assessors do with that information.

4. Tax-defaulted properties are sometimes sold without the property owners becoming aware of the delinquency and proposed sale.

When property taxes have not been paid, the tax collector declares the property tax-defaulted. During the period of tax-default, the assessor continues to send required notices of assessed value, and the tax collector will send the annual property tax bill, noting that the property is tax-defaulted. This notice starts a five-year period after which the property is subject to the tax collector's power to sell the property to satisfy the tax liens.

Problems have occurred and taxpayers have had tax-defaulted properties sold without receiving notification. This usually occurs where the county does not have the taxpayer's current address, either because the information was never received, or because it did not get properly input into its system. In these cases, notice is sent to the last known address of the last assessee by registered (R&T Code section 3365) or certified (Government Code section 53062) mail before the property is sold. If the county does not have the current address, the mail will be returned.

R & T Code section 3365 also requires the tax collector to make a reasonable effort to ascertain the address of the last assessee of the tax-defaulted property, including the examination of recent telephone books in the county where the tax-defaulted property is located and in the area of the last known address of the last assessee. There is no definition of what constitutes a "reasonable effort." The statute provides that the failure of the tax collector to make a reasonable effort does not affect the validity of any subsequent sale.

Owners may allow tax-defaulted property to be sold when the taxes due approximate or exceed the property's value. However, without discounting the property owner's responsibility to pay the property taxes, there are times when the taxpayer is unaware of the impending sale. For example, the owner may be elderly or incapacitated, may live elsewhere, or for some other reason may have let one or more years of delinquent taxes continue for five years. Perhaps the owners were paying on an adjoining parcel, and didn't realize that they should be receiving two or more tax bills. Perhaps the bills were returned because the Postal Service no longer had a forwarding address.

Recommendation:

Work with the State Controller's Office and the California Association of County Treasurer - Tax Collectors to see if there are any cost-effective administrative or procedural changes that would be of assistance when tax collectors receive returned mail pertaining to tax defaulted properties.

5. Taxpayers cannot amend an application for a reduced assessment after the final statutory filing date.

Property Tax Rule 305 specifies the last date that an application for reduced assessment can be amended. This provision limiting amendment is necessary so both parties have an adequate opportunity to prepare the case that they will present to the board or assessment hearing officer. It was adopted prior to the passage of Proposition 13, which increased new grounds for relief which an applicant might rely upon to request a change in value. These additional grounds for relief sometimes confuse the homeowner applicant who is unfamiliar with property tax assessment practices and terminology.

For instance, a homeowner may not realize the difference between a claim for a "Decline in Value" which may be filed in any assessment year and a "Base Year Value" reduction which may only be claimed within four years of the establishment of a new base year value. It is mandatory that taxpayers correctly specify a reason on the appeal's applications. Situations have occurred where taxpayers have requested a base year value change after the four year statute of limitations has passed; however, what they were really looking for was a Proposition 8 decline in value change. When the application went before the board it was rejected, because the taxpayer's property no longer qualified for a change in base year value since the statute of limitations had elapsed. Even though the taxpayer may have been entitled to some relief under the provisions of Proposition 8, they were not allowed to amend their application, thus no relief was granted.

Recommendation:

Last year the TRA Office proposed legislative changes to R & T Code section 1603 that would have:

- Allowed an unrepresented applicant/taxpayer to amend an incorrectly completed application for a changed assessment up to the conclusion of an AAB hearing.
- Mandated the assessor be granted a continuance, if requested, where the applicant had been allowed to amend an application.

The proposed changes would not have allowed a taxpayer's agent or attorney to amend an application after 5:00 p.m. on the last day upon which it might have been filed.

Our office withdrew the proposal as work progressed on the *Application for Changed Assessment* form, BOE-305-AH and on *Residential Property Assessment Appeals*, Publication 30. The Property Taxes Department did an excellent job working with industry, Clerks of the Board of Supervisors, County Assessors, the Legal Division, the Document Design and Management Section of the Taxpayer Education Section, and other Board units in revising the form. Applicants find the revised form more understandable and considerably easier to complete — many ambiguities have been eliminated. And the new Publication 30 aids applicants in the completion of the form and in the preparation of their appeal.

We will continue to monitor this area, but do not anticipate resurrecting our proposal this year.

6. The fee charged for obtaining findings of fact can be onerous and must be paid prior to the conclusion of the hearing.

R & T Code section 1611.5 provides that either the applicant for a changed assessment or the assessor can request findings of fact prior to, or at the start of, a hearing; that a fee may be charged to cover the expense of preparing these findings; and that the fee, if any, shall be reasonable. Findings can be quite simple — they include the county board's findings on all material points raised in the application and at the hearing, and include a statement of the method(s) of valuation used in determining the market value of the property. At least one major county uses a check-off form for non-complicated appeals. Findings, and a transcript, are almost always required when one of the parties seeks judicial relief after an adverse hearing before a county appeals board.

In 1985 this section was amended, providing that payment of any required fee or deposit for the findings had to be made by the requesting party prior to the conclusion of the hearing. At the same time, former language providing that the fee could not exceed ten dollars per parcel, or a total of fifty dollars for findings covering applications on contiguous parcels/assessments involving the same issues and owners, was removed.

The fee that some county boards are now charging makes the purchase of findings of fact untenable for some taxpayers who appeal the assessment of their home. One county is charging $250 plus its attorney's time.

Recommendation:

Last year the TRA Office proposed amendments to R & T Code section 1611.5, that would have placed a cap on what could be charged for findings of fact. The proposal matched the time limit for requesting a finding with the time set for payment of any deposit.

Our proposal did the following:

- Allowed findings to be requested up to ten (10) days after the conclusion of the hearing.
- Placed an upper limit on what could be charged for preparing findings.
- Clarified that the "reasonable fee" did not include costs of the county's legal counsel performing their normal functions during a hearing.

Our office withdrew this legislative proposal as work progressed on the *Application for Changed Assessment* form, BOE-305-AH and on *Residential Property Assessment Appeals*, Publication 30. We believe the revised form and the new Publication clearly state the need for written findings of fact where a taxpayer anticipates appealing any adverse board decision. We have discussed these fees with the clerks' associations, and they are committed to ensuring that the fees only include the actual costs of preparing the written findings. We will continue to monitor this area.

7. Persons fraudulently claiming to be representatives of property owners have asked the county assessor to put property in their names, so they can receive the tax bills, pay them, and thereby meet one of the requirements to perfect a claim in adverse possession.

Persons have asked assessors to put their names and addresses on the assessment roll in place of or along with the actual owner(s), and have the tax bill(s) sent to them by claiming they are paying the taxes for the owner, when in fact they are not so authorized by the owner. R & T Code section 610 allows any person, under certain circumstances, to have his or her name inserted with that of the assessee, and R & T Code section 612 makes provisions for persons assessed as an agent or other representative. In some cases tax bills have been sent "in care of" the person fraudulently claiming to be the representative of the owner.

Recommendation:

Work with the California Assessors' Association, the California Association of County Treasurer - Tax Collectors, and Board staff, to develop procedural, administrative, and/or legislative changes that would protect property owners from individuals fraudulently attempting to perfect a claim in adverse possession.

REVENUE AND TAXATION CODE

DIVISION 1. PROPERTY TAXATION

PART 14. PROPERTY TAXPAYERS' BILL OF RIGHTS*

§ 5900. **Citation of part.** This part shall be known and may be cited as "The Morgan Property Taxpayers' Bill of Rights".

§ 5901. **Legislative findings and declaration.** The Legislature finds and declares as follows:

(a) Taxes are a sensitive point of contact between citizens and their government, and disputes and disagreements often arise as a result of misunderstandings or miscommunications.

(b) The dissemination of information to taxpayers regarding property taxes and the promotion of enhanced understanding regarding the property tax system will improve the relationship between taxpayers and the government.

(c) The proper assessment and collection of property taxes is essential to local government and the health and welfare of the citizens of this state.

(d) It is the intent of the Legislature to promote the proper assessment and collection of property taxes throughout this state by advancing, to the extent feasible, uniform practices of property tax appraisal and assessment.

§ 5902. **Administration of part.** This part shall be administered by the board†.

§ 5903. **"Advocate".** "Advocate" as used in this part means the "Property Taxpayers' Advocate" designated pursuant to Section 5904.

§ 5904. **"Property Taxpayers' Advocate" — responsibilities.**

(a) The board shall designate a "Property Taxpayers' Advocate". The advocate shall be responsible for reviewing the adequacy of procedures for both of the following:

(1) The distribution of information regarding property tax assessment matters between and among the board, assessors, and taxpayers.

(2) The prompt resolution of board, assessor, and taxpayer inquiries, and taxpayer complaints and problems.

* Part 14 was added by the Statutes 1993, Chapter 387 (Senate Bill 143), effective January 1, 1994.
† California State Board of Equalization.

(b) The advocate shall be designated by, and report directly to, the executive officer of the board. The advocate shall at least annually report to the executive officer on the adequacy of existing procedures, or the need for additional or revised procedures, to accomplish the objectives of this part.

(c) Nothing in this part shall be construed to require the board to reassign property tax program responsibilities within its existing organizational structure.

§ 5905. **Advocate's review and report.** In addition to any other duties imposed by this part, the advocate shall periodically review and report on the adequacy of existing procedures, or the need for additional or revised procedures, with respect to the following:

(a) The development and implementation of educational and informational programs on property tax assessment matters for the benefit of the board and its staff, assessors and their staffs, local boards of equalization and assessment appeals boards, and taxpayers.

(b) The development and availability of property tax informational pamphlets and other written materials that explain, in simple and nontechnical language, all of the following matters:

(1) Taxation of real and personal property in California.

(2) Property tax exemptions.

(3) Supplemental assessments.

(4) Escape assessments.

(5) Assessment procedures

(6) Taxpayer obligations, responsibilities, and rights.

(7) Obligations, responsibilities, and rights of property tax authorities, including, but not limited to, the board and assessors.

(8) Property tax appeal procedures.

§ 5906. **Review of statements and other forms; Review of taxpayer complaints.**

(a) The advocate shall undertake, to the extent not duplicative of existing programs, periodic review of property tax statements and other property tax forms prescribed by the board to determine both of the following:

(1) Whether the forms and their instructions promote or discourage taxpayer compliance.

(2) Whether the forms or questions therein are necessary and germane to the assessment function.

(b) The advocate shall undertake the review of taxpayer complaints and identify areas of recurrent conflict between taxpayers and assessment officers. This review shall include, but not be limited to, all of the following:

(1) The adequacy and timeliness of board and assessor responses to taxpayers' written complaints and requests for information.

(2) The adequacy and timeliness of corrections of the assessment roll, cancellations of taxes, or issuance of refunds after taxpayers have provided legitimate and adequate information demonstrating the propriety of the corrections, cancellations, or refunds, including, but not limited to, the filing of documents required by law to claim these corrections, cancellations, or refunds.

(3) The timeliness, fairness, and accessibility of hearings and decisions by the board, county boards of equalization, or assessment appeals boards where taxpayers have filed timely applications for assessment appeal.

(4) The application of penalties and interest to property tax assessments or property tax bills where the penalty or interest is a direct result of the assessor's failure to request specified information or a particular method of reporting information, or where the penalty or interest is a direct result of the taxpayer's good faith reliance on written advice provided by the assessor or the board.

(c) Nothing in this section shall be construed to modify any other provision of law or the California Code of Regulations regarding requirements or limitations with respect to the correction of the assessment roll, the cancellation of taxes, the issuance of refunds, or the imposition of penalties or interest.

(d) The board shall annually conduct a public hearing, soliciting the input of assessors, other local agency representatives, and taxpayers, to address the advocate's annual report pursuant to Section 5904, and to identify means to correct any problems identified in that report.

§ 5907. **Forbids evaluation of officer or employee based on assessments or collections.** No state or local officer or employees responsible for the appraisal or assessment of property shall be evaluated based solely upon the dollar value of assessments enrolled or property taxes collected. However, nothing in this section shall be construed to prevent an official or employee from being evaluated based upon the propriety and application of the methodology used in arriving at a value determination.

§ 5908. **Education and instruction of staff and local taxpayers.** Upon request of a county assessor or assessors, the advocate, in conjunction with any other programs of the board, shall assist assessors in their efforts to provide education and instruction to their staffs and local taxpayers for purposes of promoting taxpayer understanding and compliance with the property tax laws, and, to the extent feasible, statewide uniformity in the application of property tax laws.

§ 5909. **Written ruling regarding tax consequences of transaction.**

(a) County assessors may respond to a taxpayer's written request for a written ruling as to property tax consequences of an actual or planned particular transaction, or as to the property taxes liability of a specified property. For purposes of statewide uniformity, county assessors may consult with board staff prior to issuing a ruling under this subdivision. Any ruling issued under this subdivision shall notify the taxpayer that the ruling represents the county's current interpretation of applicable law and does not bind the county, except as provided in subdivision (b).

(b) Where a taxpayer's failure to timely report information or pay amounts of tax directly results from the taxpayer's reasonable reliance on the county assessor's written ruling under subdivision (a), the taxpayer shall be relieved of any penalties, or interest assessed or accrued, with respect to property taxes not timely paid as a direct result of the taxpayer's reasonable reliance. A taxpayer's failure to timely report property values or to make a timely payment of property taxes shall be considered to directly result from the taxpayer's reasonable reliance on a written ruling from the assessor under subdivision (a) only if all of the following conditions are met:

(1) The taxpayer has requested in writing that the assessor advise as to the property tax consequences of a particular transaction or as to the property taxes with respect to a particular property, and fully described all relevant facts and circumstances pertaining to that transaction or property.

(2) The assessor has responded in writing and specifically stated the property tax consequences of the transaction or the property taxes with respect to the property.

§ 5910. **Standardization of interest rates and statutes of limitations.** The advocate shall, on or before January 1, 1994, make specific recommendations to the board with respect to standardizing interest rates applicable to escape assessments and refunds of property taxes, and statutes of limitations, so as to place property taxpayers on an equal basis with taxing authorities.

§ 5911. **Legislative intent.** It is the intent of the Legislature in enacting this part to ensure that:

(a) Taxpayers are provided fair and understandable explanations of their rights and duties with respect to property taxation, prompt resolution of legitimate questions and appeals regarding their property taxes, and prompt corrections when errors have occurred in property tax assessments.

(b) The board designate a taxpayer's advocate position independent of, but not duplicative of, the board's existing property tax programs, to be specifically responsible for reviewing property tax matters from the viewpoint of the taxpayer, and to review and report on, and to recommend to the board's executive officer any necessary changes with respect to, property tax matters as described in this part.

DIFFERENCES BETWEEN BUSINESS AND PROPERTY

TAXPAYERS' BILLS OF RIGHTS

A major difference between the Business Taxpayers' Bills of Rights and the Property Taxpayers' Bill of Rights is in the resolution of taxpayer complaints. The Board of Equalization is the agency responsible for assessing and collecting business taxes. The Executive Director has administrative control over the functions, staff, and their actions. The Advocate reports directly to the Executive Director and is separate from the business and property taxes line programs.

When taxpayers' complaints about the Board of Equalization business taxes programs are received in the Advocate's Office, the Advocate and her staff have direct access to all the documents and staff involved in the taxpayers' issues. The Advocate and her staff are liaisons between the taxpayers and the Board staff to solve the problems. In the area of levies, for example, the Advocate has the ability to stay collection and to order the release of levy and the refund of up to $1500 upon finding that the levy threatens the health or welfare of the taxpayer or his or her spouse and dependents or family. If the Advocate disagrees with other actions of the staff and is unable to resolve the situation satisfactorily, the issue is elevated to the Executive Director for resolution. The Executive Director then has the authority to overturn the actions of the staff.

However, responding to property taxpayers' complaints, the Advocate typically has no direct access to the taxpayers' documents. Each of the 58 counties maintains its own records. The Advocate and her staff must work with county assessors, tax collectors, and auditor-controllers (most of whom are elected officials), plus clerks to the Boards of Supervisors. The law provides the Advocate with broad oversight, but there is no authority to mandate or overturn local actions. The Advocate and her staff must use negotiation skills and persuasion to solicit cooperation and possible change. Thus far, this has worked successfully, due in no small part to the cooperation of local county officials.